

EXHIBIT 49

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re:

Bair Hugger Forced Air Warming
Products Liability Litigation

This Document Relates To:

All Actions

MDL No.
15-2666 (JNE/FLM)

VIDEOTAPED DEPOSITION

OF

MARK ALBRECHT

VOLUME 2

Minneapolis, Minnesota

Saturday, November 12th, 2016

Reported by:

Amy L. Larson, RPR

Job No. 115236

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A. Mike and Paul have been funded by Augustine to do research.

Q. And when you said, "The doctors that do our research," you weren't talking in this e-mail to Mr. Neils about doctors who do research for you and Mr. Neils, correct?

A. No.

Q. You were talking about doctors that do research for Augustine?

A. That we had been employed at in the past, yes.

Q. Okay. And what did you mean by, "How crazy is this"?

A. Well, again, this is kind of backdoor communications, but it's the -- and goes back to what you asked me before, that I find the letter a little bit disturbing and we deal with that. He's a controversial figure.

Q. Okay. And what did you understand Mr. Neils to be saying to you when he said, "Yes, there will be flames"?

A. I can't speculate.

MR. ASSAAD: Objection; calls for speculation.

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THE WITNESS: I don't know.

BY MR. COREY GORDON:

Q. Did you ask him what he meant by that?

A. No.

(Whereupon, Exhibit 25 was marked for identification.)

BY MR. COREY GORDON:

Q. Let me show you Exhibit 25. This is a document that was produced by you. It bears Bates numbers Albrecht_003353 [sic] through 0003361, and it has -- the title is, "A Critical Analysis of Forced-Air Warming Does Not Worsen Air Quality in Laminar Flow Operating Rooms," by Sessler et al., and the author appears to be Scott Augustine, M.D.

My first question is: Did you have anything to do with the drafting of this?

A. I'm unsure.

Q. Is it possible that you did?

A. Maybe elements of this, I don't know.

Q. Do you recall doing any work to analyze the Sessler study that's referred to in this in providing Dr. Augustine with your analysis of it?

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A. I may have. I'm unsure.

Q. Okay. Why don't you look through this --

A. There's a lot here.

Q. -- document and -- I agree -- see if you can identify anything that appears to be based in whole or in part on work you might have done.

A. (Reviews document.) Okay.

Q. Can you identify any areas that you think you would have had input in?

A. He may have asked me for information in respect to reviewing some of the ventilation standards possibly. It looks like some of the results of a couple of the studies here -- excuse me -- were a part of that.

Q. Let me direct you to the page that's marked at the bottom Albrecht_0003360.

A. Okay.

Q. Under the section, "Discussion," do you see that?

A. Yup.

Q. There's -- the first study that is discussed is the McGovern study that's -- we previously marked as Exhibit 8, correct?

A. I believe so.

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Q. Okay. And it talks about the -- the -- the part of the study addressing airflow ventilation disruption, but then in the next paragraph Dr. Augustine writes, "More important, forced-air warming was shown to cause a 3.8 times increase in deep joint infection rates." Did I read that correctly?

A. Okay.

Q. You would agree that the -- that the McGovern paper in which you were a coauthor, it did not show that forced-air warming caused a 3.8 times increase in deep joint infection rates, right?

MR. ASSAAD: Objection to form.

THE WITNESS: It was an

observational study, so whatever caveats come with that.

BY MR. COREY GORDON:

Q. Well, would you agree with Dr. Augustine's characterization of the study that you were a coauthor of that it found that forced-air warming caused a 3.8 times increase in deep joint infection rates?

MR. ASSAAD: Objection to form.

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 2 THE WITNESS: It depends on what
 3 you define as "cause." It was associated
 4 with.
 5 BY MR. COREY GORDON:
 6 Q. In your professional experience as a
 7 statistician dealing in the field of medical
 8 and biological issues, is there any
 9 difference to you between something that's
 10 associated with and something that causes?
 11 MR. ASSAAD: Objection to form.
 12 THE WITNESS: Yes, there is a
 13 difference between association and cause, and
 14 causation.
 15 BY MR. COREY GORDON:
 16 Q. And you were one of the coauthors of the
 17 McGovern study that's being characterized
 18 here. Do you agree with the characterization
 19 that your study found that forced-air warming
 20 caused a 3.8 times increase in deep joint
 21 infection rates?
 22 MR. ASSAAD: Objection to form.
 23 THE WITNESS: I would agree that
 24 it's associated with the 3.8 times increase,
 25 that's what the study would say.

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1 ALBRECHT
 2 a 3.8 times increase in deep joint infection
 3 rates."
 4 MR. ASSAAD: Objection to form,
 5 asked and answered.
 6 BY MR. COREY GORDON:
 7 Q. Is that a correct characterization or not?
 8 MR. ASSAAD: Same objection.
 9 THE WITNESS: It depends on the
 10 context. It's not causation, it's
 11 association.
 12 MR. COREY GORDON: Okay.
 13 BY MR. COREY GORDON:
 14 Q. I can't give you any more context on what
 15 Dr. Augustine's words are here. "Forced-air
 16 warming was shown to cause a 3.8 times
 17 increase in deep joint infection rates," is
 18 that, in your view as one of the coauthors of
 19 the study, accurate or not accurate?
 20 MR. ASSAAD: Objection to the
 21 form, asked and answered. Object to the
 22 preamble.
 23 MR. COREY GORDON: But you've got
 24 to move to strike it, Gabriel.
 25 MR. ASSAAD: I'm not moving to

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1 ALBRECHT
 2 BY MR. COREY GORDON:
 3 Q. So you would -- you would -- you would agree,
 4 then, that you did not conclude or show that
 5 it caused a 3.8 times increase in deep joint
 6 infection rates?
 7 MR. ASSAAD: Objection to form.
 8 THE WITNESS: We did not prove
 9 causation.
 10 BY MR. COREY GORDON:
 11 Q. So -- and you would agree that this statement
 12 by Dr. Augustine is a mischaracterization of
 13 the study on which you were a coauthor?
 14 MR. ASSAAD: Objection to form.
 15 BY MR. COREY GORDON:
 16 Q. Correct?
 17 A. It's speculation, because it didn't use the
 18 exact word "causation." If I were to look
 19 for association versus causation, I'd need to
 20 have that word, if you want me to be frank
 21 with you on statistical terms.
 22 Q. I just want you to be frank with me on
 23 whether you think that Dr. Augustine
 24 accurately characterized your study when he
 25 said, "Forced-air warming was shown to cause

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 2 strike it, I'm just objecting to it.
 3 THE WITNESS: "More importantly,
 4 forced-air warming was shown to associate
 5 with a 3.8 times increase in deep joint
 6 infection rates," that I would agree with.
 7 With what's written there, it seems a
 8 little -- I would have to say probably not,
 9 no.
 10 BY MR. COREY GORDON:
 11 Q. And -- and, in fact, you recall the exercise
 12 we went through at some length in your first
 13 deposition?
 14 A. Oh, yes.
 15 Q. The association between forced-air warming
 16 and infection rates maybe would not be very
 17 strong if you factored out the deep vein
 18 thrombosis treatment change?
 19 A. If you had reason to believe --
 20 MR. ASSAAD: Objection; asked and
 21 answered.
 22 THE WITNESS: If you had reason to
 23 believe that the standard of care was lowered
 24 for those patients in those areas, maybe. So
 25 it wasn't no thrombosis agent versus